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Held at the Palais Wilson, Geneva,
on Friday, 5 May 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.418/Add.1.

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GE.00-41918 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Paraguay (CAT/C/49/Add.1; HRI/CORE/1/Add.24)

1. At the invitation of the Chairman, Mr. Ramirez-Boettner, Mr. Canillas, Ms. Villagra and Mr. Ramirez (Paraguay) took seats at the Committee table.

2. The CHAIRMAN invited the delegation of Paraguay to present the third periodic report of Paraguay (CAT/C/49/Add.1).

3. Mr. RAMIREZ-BOETTNER (Paraguay) said that the Government of Paraguay had drafted its third periodic report in a spirit of objectivity and frankness, without concealing the difficulties that had been encountered. It was in the same spirit that the delegation of Paraguay would present the developments that had taken place since 14 June 1999, the date when the third report had been submitted.

4. A new Code of Criminal Procedure had entered into force on 1 March 2000, which had revolutionized the penal system. The inquisitorial procedure had been replaced by the adversarial procedure, the principle of public oral hearings had been introduced and respect for the principles embodied in the Convention against Torture was guaranteed. A new Penal Code had also been adopted: it contained, for the first time, a definition of torture, both physical and psychological, punished the obtaining of statements under duress and ensured greater respect for the rights of the accused. In addition, it entrusted the initiation and supervision of enquiries to the Public Prosecutor's Office, thereby removing the discretionary powers previously exercised by the police, which had been the cause of numerous abuses.

5. Progress had also been made in solving the problems left by the dictatorship: the sentences that had been handed down for acts of torture concerned torturers from the period of the dictatorship. Paraguay was proud to be the only country in Latin America's Southern Cone that had not passed an amnesty Act establishing the impunity of the perpetrators. A number of people who had been in important positions during the dictatorship, including the chief of the national police's investigations service, had been sentenced to up to 25 years' imprisonment for torturing several people to death, and were now serving their sentences; the trials of around 30 other people accused of acts of torture were currently proceeding. The Ombudsman was responsible for establishing whether torture victims were entitled to compensation. The implementation of Act No. 838/96, providing for compensation of victims of human rights violations under the dictatorship, had been set back because the Ombudsman had not yet been appointed, but progress was being made nevertheless. The Senate had nominated three candidates for the post of Ombudsman and one of them would shortly be selected by the Chamber of Deputies.

6. For a clear view of developments, it was important to describe what had been happening in Paraguay in recent years. The authoritarian political parties that had come to power in August 1998 had been prepared to commit fresh abuses of power, ignore Supreme Court

decisions and suppress opposition. The assassination of the Vice-President had put the country's future at risk. All the democratic forces of civil society had reacted strongly to the assassination, backed the country's democratic institutions and demanded the impeachment of the President. The President had reacted by ordering all opponents of his Government to be repressed by force: eight demonstrators had been killed and around 100 injured. A number of ambassadors had resigned as a mark of their disagreement with the Government. Despite the repression, the opposition had not weakened and, with impeachment imminent, the President had stepped down and left the country. Paraguay had entered a new phase in March 1999; a Government of national unity had taken charge and encouraged the participation of all political parties and of all social actors who wished to see the democratic process and the rule of law consolidated, the practices of the past halted once and for all and human rights effectively defended.

7. Civil and political rights, on the one hand, and economic, social and cultural rights, on the other, were indivisible and interdependent. Paraguay was experiencing enormous economic difficulties and, through all the international organizations, particularly the World Trade Organization (WTO), was asking the developed countries to open their markets to agricultural produce from developing countries and to grant them special treatment in order to enable them to deal with their economic problems.

8. He said that, despite the admitted delays in implementing legislation, the Government was making efforts to extend its human rights policy. One recent incident that had caught the attention of the international community had involved the Panchito López Correctional Centre for young offenders aged 14-20, which the Government had decided to close because conditions were so bad there. Two fires had claimed lives and caused injuries among the inmates. It had been difficult to find a new location, owing to resistance from local people, but it had been done: the inmates' living conditions were better and the penitentiary itself was becoming more and more open and more geared towards reintegration. On 13 March 2000, the first group of 40 young offenders had been transferred there. In parallel with the improvement of prison establishments, new judges specializing in juvenile crime were looking into the possibility of a broader application of alternatives to prison sentences.

9. At a more general level, he pointed out that new human rights defence mechanisms and institutions had been established. The most important were the Office of Public Defence Counsel, which was a department of the Supreme Court, the new Department of Human Rights and Humanitarian Law (Ministry of Defence) and the Department of Human Rights of the Ministry of Foreign Affairs. The Government intended to establish an inter-agency commission for the defence of human rights, which would be responsible for implementing the recommendations made by international organizations and proposing solutions to the various problems the country faced. With the assistance of various agencies and non-governmental organizations (NGOs), the Government had begun developing a national plan to promote and protect human rights. All the elements he had described demonstrated the considerable progress made in Paraguay since the submission of its previous report.

10. Mr. GONZALEZ POBLETE (Country Rapporteur) said that the third periodic report of Paraguay had been submitted within the required time, since it had been due on 11 April 1999 and had been submitted on 14 June 1999. However, although in that regard it represented an improvement on the first two reports, it was not as satisfactory as the others in terms of form or

substance. Indeed, the third periodic report did not by any means follow the Committee's general guidelines on the presentation of reports, as revised on 18 May 1998. It confined itself to describing a few changes in general terms, and did not analyse their nature or their scope in relation to Paraguay's obligations under the Convention. Fortunately, the oral presentation made by the head of the Paraguayan delegation had contained more information, most of it reporting very positive developments.

11. The written report contained little concrete data and no analysis of the measures implemented. For example, paragraph 6 reported the establishment of the Office of Public Defence Counsel, but did not explain whether his staff of 70 defence lawyers for poor suspects throughout the country was sufficient to meet the State's obligation under the Constitution, article 17, paragraph 6, which provided for the right to free legal counsel for disadvantaged persons. In addition, paragraph 6 of the report did not explain whether those lawyers could provide legal aid to torture victims. The use of the terms "defence lawyers" and "suspects" suggested that torture victims were not able to appeal to the Office of Public Defence Counsel. In the opinion of two NGOs, Human Rights Coordination Paraguay and the Churches Emergency Relief Committee, the 70 lawyers of the Office of the Public Defence Counsel were not sufficient to help torture victims throughout the country, most of whom belonged to the poorest sectors of the population.

12. According to paragraph 7 of the third report, important developments had taken place following the establishment of the General Defence Counsel Office; but was that the same as the Office of Public Defence Counsel mentioned in the preceding paragraph? How could there be two different institutions with apparently the same aims?

13. Paragraphs 10-11 of the third report noted the entry into force of a new Penal Code and Code of Criminal Procedure. Given that the initial report (submitted in 1993) and the second periodic report had already mentioned an initial draft of the Penal Code, he found it surprising that when the legislation had finally entered into force, after more than seven years of procedure, the report should simply state that the new Penal Code defined torture for the first time, without citing the relevant article or giving any way of determining whether it complied with the definition given in article 1 of the Convention. It would also have been interesting to know more about the types of offences that might be covered by the definition given in the new Penal Code, but the report merely stated that the provisions would be very useful in combating impunity in respect of acts of violence and torture committed by public officials.

14. With regard to the Code of Criminal Procedure, the report merely stated (para. 19) that the new Code was in line with the new criminal legislation. The only aspect of the new Code of Criminal Procedure to be described in detail was the institution of a visiting magistrate (paras. 14-16). That was certainly an extremely important step, since there were numerous cases of torture and cruel, inhuman or degrading treatment in Paraguay's penitentiaries, as mentioned in paragraphs 16-18 of the report; yet no mention was made of the fact that article 15 of Act No. 1,444 of 1998 (i.e. earlier than the date of the report) postponed indefinitely the establishment of such a position and its entry into operation.

15. Paragraph 9 of the report stated that Act No. 838/95 on reparation for victims of the dictatorship had finally entered into force. Paragraphs 25-34 gave useful information on the

main points of the Act. He said the Act could have been considered as implementation of article 14 of the Convention, except that it covered only victims of the dictatorship and not persons tortured after the end of the dictatorship. Moreover, it seemed from paragraph 27 (3) of the report, that torture giving rise to compensation was redefined as torture resulting in serious and manifest physical or psychological impairment. The scope of article 14 of the Convention was broader than that. Another problem was that, although the Act on compensation for victims of the dictatorship had entered into force, it could be implemented only after the appointment of an Ombudsman, who was responsible for deciding who was entitled to compensation. It was regrettable that, eight years after the entry into force of the 1992 Constitution, article 276 of which provided for the establishment of the institution of Ombudsman, and more than four years after promulgation of the Office of the Ombudsman (Organization) Act, the Paraguayan Parliament had still not appointed either an Ombudsman or a Deputy Ombudsman. According to (provisional) article 32 of the Organization Act, the terms of office of the Ombudsman and the Deputy Ombudsman coincided with that of the 1993-1998 Parliament and would end at the same time. What would the situation be if the Ombudsman and his deputy were appointed by the current Congress? Would it be necessary to repeat the procedure provided in article 4 of the Organization Act? The reasons for the delay in making an appointment, given in paragraph 5 of the report, were also disturbing. There was an urgent need to appoint an Ombudsman with the necessary qualities of probity, competence and impartiality, not only to ensure that the victims of ill-treatment were compensated but also because, as already stated in the initial report (CAT/C/12/Add.3), the institution was one of the best ways of guaranteeing citizens' rights.

16. With regard to crimes committed during the dictatorship, he said he was pleased to note that the attempts to shift the obligation to compensate victims from the State to the individual perpetrators of such violations had been abandoned.

17. The report made brief references to the situation in prisons. The delegation had mentioned the Panchito López Correctional Centre affair, the tragic consequences of which had highlighted the problem of prisons in Paraguay. But those events could really be only the tip of the iceberg. Paragraph 39 stated that only 4.12 per cent of all prisoners in Paraguay were serving a sentence and that 90 per cent were released, not because a decision in law had been implemented, but because they had served full term; the Committee would like to know what that meant in practice.

18. It appeared from the reports of human rights NGOs that the majority of acts of torture and other cruel, inhuman or degrading treatment were committed in prisons and police stations. According to the 1999 report of the Churches Emergency Relief Committee, Tucumbu prison, which had a capacity of 750 inmates, had held 1,742 in 1999, only 145 (8 per cent) of whom had been convicted. According to another organization, the country's prison population had totalled 4,179 as of 16 August 1999, only 7.1 per cent of whom had been convicted. That and other information led to the conclusion that detainees' rights were constantly being violated. Overcrowding in prisons, poor administration and corruption in places of detention were of course not unique to Paraguay, but, in view of the extent of the problem, it was imperative that a major financial effort should be made. According to the Constitution, article 20, the purpose of

depriving a person of his liberty was to protect society, and also to rehabilitate the prisoner. In their current form, prisons were more like schools for crime and delinquency than rehabilitation centres.

19. The new Penal Code and the new Code of Criminal Procedure, which had entered into force in 1999, contained a number of positive provisions. Under articles 8 and 37 of the Penal Code, for example, criminal proceedings could now be instituted in Paraguay for offences committed abroad, a provision that complied with article 5 of the Convention and implemented the recommendation made by the Committee following its consideration of the second periodic report. Under article 102, the crimes of genocide, torture, forced disappearance, abduction and political homicide were not subject to the statute of limitations. However, there could be a conflict with the Code of Criminal Procedure, articles 136-139, which stipulated that criminal proceedings must be completed within three years, after which the action was automatically extinguished. There must surely be a worry that suspected perpetrators of crimes of torture could take advantage of the slowness of the proceedings or the negligence of the Public Prosecutor's Office. In his view the definition of torture contained in the new Penal Code, article 309, strayed too far from the definition given in article 1 of the Convention. In fact, it introduced a different concept, one that was psychological and subjective in nature and very difficult to prove in court, namely intent to destroy or do serious harm to the personality of the victim or of a third party. There was a risk that acts of torture would then be covered by articles 120-122 of the new Penal Code, which punished the offences of coercion, threat and injury, and therefore be subject to far lighter penalties than those warranted by the seriousness of torture. Moreover, such offences were subject to the statute of limitations, which should not apply to the crime of torture. From the standpoint of the Convention, the most significant effect of the new Code of Criminal Procedure was to replace the inquisitorial procedure by an adversarial one. In the inquisitorial procedure, the confession was the most important piece of evidence, which increased the risk of the use of torture, whereas in the adversarial procedure the confession was less important, which meant there was less risk of torture being used.

20. Generally speaking, the new Code of Criminal Procedure strengthened the constitutional safeguards surrounding arrest and detention, such as the right not to make a statement except in the presence of a lawyer, a maximum of 48 hours' incommunicado detention, and the police not being allowed to take a statement from the accused, or to make an arrest without a warrant from the Public Prosecutor's Office or a magistrate. On the last point, however, he said article 239 authorized the police to detain a person if they caught him in the act, but also if there was sufficient evidence that the person had been involved in a punishable offence and there was provision for pre-trial detention. That was a worrying possibility, since it gave police the freedom to determine what constituted sufficient evidence. No doubt the delegation would be able to dispel his doubts and concerns.

21. He said that, in accordance with its guidelines, the Committee expected a report to provide information on "complaints, inquiries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment". He was obliged to say, unfortunately, that the situation in Paraguay remained as worrying as ever and that the report said nothing about it. Indeed, the problem seemed to have become more serious, not only in police stations but also in prisons and the army. In June 1999, a delegation from the Inter-American Commission on Human Rights had visited Paraguay and

had later issued a press release listing causes for concern: persons deprived of liberty without having been convicted, arrests made by the police without a warrant, lengthy trials of persons of limited means, difficult prison conditions. The Commission had also found the situation of conscripts during their military service worrying: the use of corporal punishment, with physical and mental consequences, and deaths going unpunished. Thus, no progress had been made since the consideration of the second report, with the notable exception of provision for Paraguayan jurisdictions to hear cases of torture committed abroad.

22. Lastly, he said that Paraguay had not yet made a declaration under either article 21 or article 22 of the Convention.

23. Mr. CAMARA (Alternate Country Rapporteur) also noted that the report under consideration (CAT/C/49/Add.1) did not comply with the Committee's guidelines and said that he had considered the implementation of each article of the Convention with strict reference to the State party's second periodic report (CAT/C/29/Add.1). Article 10, for example, on education and information, was not mentioned in the third report but had received detailed treatment in paragraphs 41-48 of the second report. Given that the second report had been considered in May 1997, it would have been interesting to know what new developments in those areas had taken place in Paraguay since then. Article 11 had been dealt with in paragraphs 49-52 of the second report, which had stated that the Code of Criminal Procedure was to be reformed. It appeared that the draft reform had been given force of law by Act No. 1,286 of 8 July 1998; thus the Committee would have been particularly interested to receive more information on the relevant provisions of the new Code of Criminal Procedure.

24. The State's obligation under article 12 of the Convention to proceed to a prompt and impartial investigation wherever there was reason to suspect torture had received scant mention in the second periodic report, and the third report said nothing at all on the subject. Yet it was a fundamental issue, for efforts to eliminate such practices could only be effective if torture was punished without delay. The Committee therefore needed to know what had been done recently in that regard following the reform of the Code of Criminal Procedure. The same applied to implementation of article 13 of the Convention.

25. Mr. González Poblete had mentioned the right to reparation and compensation in his discussion of the Ombudsman. The implementation of article 14 of the Convention raised serious issues, and indeed no less than one third of the report was devoted to that subject. The authors of the report were themselves very critical and the doubts they expressed regarding the existing provision for compensation seemed to be based on the fact that claims would be subject to a time limit, since Act No. 838 was a special Act covering only offences committed between 1954 and 1989. Given that the Convention was timeless, what was to be done about acts of torture committed after 1989? Moreover, the Act contained serious shortcomings, since compensation was awarded only for "torture resulting in serious and manifest physical or psychological impairment" (third report, para. 27). Article 1 of the Convention contained no requirement whatsoever that victims should suffer sequelae in order for the treatment inflicted on them to qualify as torture. The fact that persons who were not suffering from sequelae could not be compensated was a serious problem. He would not return to the question of the institutional obstacles preventing the appointment of an Ombudsman, which cast a certain amount of doubt on the effectiveness of the institution. It would be necessary in any case to establish two parallel

systems, one allowing victims to be compensated promptly and the other giving them recourse to ordinary jurisdictions, which seemed to be virtually impossible in practice. He would welcome the delegation's comments on the question of compensation, which appeared under the circumstances to be highly problematic.

26. Implementation of article 15 had been discussed in paragraphs 63-64 of the second report (CAT/C/29/Add.1), but in a rather unsatisfactory way, and was not mentioned at all in the current report. The objective of article 15 was an absolute prohibition of all courts from taking account of evidence obtained by torture, and even more so basing a conviction on such evidence. It was therefore vital for the Committee to know whether the new Code of Criminal Procedure dealt with that point and in what terms, and to be given all the case law on the subject.

27. Mr. MAVROMMATIS thanked the Paraguayan delegation for the supplementary information it had provided and congratulated Paraguay on being the only country in the region not to have granted amnesty to the perpetrators of crimes mentioned in the Convention. Human rights bodies had repeatedly stressed that such amnesties should never be granted, for they were an invitation to recidivism. In that regard, it would be useful to know whether Paraguay had requested the extradition of any offenders who had fled abroad, as the Convention required.

28. The third report (CAT/C/49/Add.1) was notable not only for its brevity, but also for the strange impression it gave of not having been prepared by the Government. It was a highly critical document and relevant in certain respects, but it did not meet the Committee's expectations and did not enable it to carry out its task, which was to consider developments in the State party with regard to the Convention, article by article. The two Country Rapporteurs had been obliged to examine the Penal Code and the Code of Criminal Procedure very closely and to seek relevant information in the preceding report.

29. He said the establishment of the institution of Ombudsman was a great step forward, although, contrary to what was stated in the report, the Supreme Court could not "accede" to the Universal Declaration of Human Rights, since it was not a legal instrument. Paraguay had, however, ratified the International Covenant on Civil and Political Rights and the Convention, so could the Supreme Court not invoke those instruments in order to authorize the payment of compensation to victims pending full implementation of the Compensation Act? Many countries had adopted that procedure and used case law to fill any gaps in the legislation; that was particularly useful in situations where an appointment was held up owing to problems of a political nature.

30. Apparently, Paraguay had no legal aid system; however, a public defence counsel mechanism had just been established, and it would be useful to receive some information on the way it was to operate, and particularly whether the lawyer who was paid by the State could visit the person he was defending from the very start of the proceedings, i.e. as soon as detention began, since it was then that the risk of torture was greatest.

31. The report was blunt about the inadequacies of the judicial system and the culture of impunity that prevailed in Paraguay. He wondered how, under the circumstances, the

independence of the judiciary was currently being ensured and what plans there were to rectify the shortcomings: the Convention could not be implemented without an effective judicial apparatus.

32. Previous speakers had already mentioned the problems relating to compensation. Compensation seemed to be reserved for the most serious cases, although the Convention required all torture victims to be compensated. In addition, only persons who had been imprisoned for more than one year could claim compensation, a provision that contravened the International Covenant on Civil and Political Rights, which did not set a minimum period; if restrictions of that kind were placed on the provisions of an international instrument, the State should at the very least enter a reservation when it ratified the instrument. He would also welcome some information on the measures taken with regard to rehabilitation of torture victims, a subject that was not mentioned in the report. Lastly, he wondered whether victims could not be compensated through civil proceedings, as was the case in other countries.

33. It appeared that only 4.2 per cent of detainees had been imprisoned as a result of a judicial sentence: he wondered therefore what had happened to the presumption of innocence; in addition, the fact that 96 per cent of the prison population had been detained prior to trial led him to wonder about the existence of remedies such as amparo and habeas corpus in Paraguay. No one should be kept in prison indefinitely, and many countries had introduced a maximum period for pre-trial detention, which even in the most serious criminal cases could not exceed one year, for example. It was absolutely essential to establish safeguards in that respect, for holding an innocent person in prison indefinitely was unacceptable under the Convention.

34. Mr. EL MASRY said he agreed with the comments made by the other members and appreciated the frankness with which the report had been drafted: it raised many questions for the Paraguayan authorities to answer - questions the Committee itself would wish to ask the State party. Paragraphs 17-18, for example, acknowledged that the rule of law had broken down, violence reigned in prisons and even the life and physical integrity of inmates could not be guaranteed: under such circumstances, one could only ask the Government what it intended to do to rectify the situation. A similar question arose with regard to the practice of detaining people frequently for short periods, in order to maintain a climate of fear: did the authorities intend to take any steps to stop the recurrence of such situations?

35. According to paragraph 29, the Government had not managed to set up a commission of inquiry to find out what had happened to victims and to determine State responsibility for disappearances, killings and torture; that was an obligation under article 12 of the Convention. The final sentence of paragraph 30 was disconcerting, to say the least, and the least he could do was to recall that article 14 required fair and adequate compensation for victims.

36. Ms. GAER said she was as astonished as Mr. Mavrommatis at the openness of the report. She endorsed the comments made by other members of the Committee and wished merely to return to two points. Firstly, she noted that Act No. 838 explicitly described General Stroessner's regime as a "dictatorship" and that the Government acknowledged that there was no reason why the people should pay for the crimes of the dictatorship. With General Stroessner living peacefully in Brasilia, she would like more information on the

inquiries being carried out in Paraguay into acts of torture and other crimes committed under the dictatorship and to know what progress was being made in proceedings against the perpetrators.

37. Secondly, she said she was concerned at the situation of women detainees, particularly in view of paragraphs 20-21 of the report. She said she would like more information on the worrying question of justice for women, whether victims or accused. The report stated that progress had been made in all sectors of society with regard to rape victims, thanks in particular to the establishment of mechanisms allowing them to make a complaint in conditions that were less traumatizing. That was of course a positive point, but the Committee was more interested in the situation in prisons specifically, which gave great cause for concern. The 1999 human rights report by the United States Department of State showed that, although male warders were not allowed to be assigned to female prisons, cases of female prisoners being raped by male warders had been reported. The report also showed that sexual violence and rape were commonplace in Paraguay and rarely reported, as was unfortunately also the case in many other countries. Given that fewer than 4.2 per cent of detainees had been convicted, little was known about the prison population; she would like to know in particular what percentage of detainees were women, what offences they had been imprisoned for and what percentage of cases resulted in conviction, how complaints of sexual violence in prisons were dealt with and what the penalties were for sexual violence. In that light, and in view of the bad conditions prevailing in Paraguay's prisons, it was important to have the answers to all those questions as soon as possible.

38. Mr. RASMUSSEN wished to return to the issue of juvenile prisons. He recalled the events at the Panchito López Correction Centre, where conditions had been appalling: overcrowding, long periods in pre-trial detention and deplorable material conditions had resulted in inmates setting fire to the premises, causing eight deaths. Barely one week later, two of the young prisoners were reported to have been tortured by the guards. As it happened, he had visited the country only a few days later, and he had seen for himself how those events had aroused feelings strong enough to give some hope that the situation would change. Some excellent ideas had come up in the subsequent public debate, which had addressed in particular the question of prisoners' education and the Committee would like to know what progress had been made following those tragic events, from the standpoint of the implementation of article 10 of the Convention.

39. Mr. YU Mengjia said he would like to know what steps had been taken to deal with the allegations that peasants evicted from land they were occupying had been tortured.

40. The CHAIRMAN associated himself with the questions asked by the members of the Committee and requested the delegation to give their response at a later meeting of the Committee.

41. The delegation of Paraguay withdrew.

The first part (public) of the meeting rose at 12.05 p.m.